

No. 9153

**DENMARK
and
MALAYSIA**

Agreement on a Danish Government Loan to Malaysia (with annexes and exchange of letters). Signed at Kuala Lumpur, on 29 February 1968

Official text: English.

Registered by Denmark on 9 July 1968.

**DANEMARK
et
MALAISIE**

Accord relatif à un prêt du Gouvernement danois à la Malaisie (avec annexes et échange de lettres). Signé à Kuala-Lumpur, le 29 février 1968

Texte officiel anglais.

Enregistré par le Danemark le 9 juillet 1968.

No. 9153. AGREEMENT¹ BETWEEN THE GOVERNMENT OF DENMARK AND THE GOVERNMENT OF MALAYSIA ON A DANISH GOVERNMENT LOAN TO MALAYSIA. SIGNED AT KUALA LUMPUR, ON 29 FEBRUARY 1968

The Government of Denmark and the Government of Malaysia desiring to strengthen the traditional co-operation and cordial relations between their countries, have agreed that, as a contribution to Malaysia's Development Plans, a Danish Government Loan will be extended to Malaysia in accordance with the following provisions of this Agreement and Annex A and B attached, which are considered an integral part of the Agreement :

Article I

THE LOAN

The Government of Denmark (hereinafter called the Lender) agrees to make available to the Government of Malaysia (hereinafter called the Borrower) a development Loan in an amount of 30 million Danish Kroner for the realization of the purposes described in Article VI of this Agreement.

Article II

LOAN ACCOUNT

Section 1. An account designated " Bank Negara Malaysia as agents for Government of Malaysia loan account " (hereinafter called " Loan Account ") shall be opened with Danmarks Nationalbank (acting as agent for the Lender) in favour of Bank Negara Malaysia (acting as agent for the Borrower). The Lender shall ensure that sufficient funds are always available in the Loan Account to enable the Borrower to effect punctual payment for goods and services procured under this Loan, provided that the amounts successively made available to the Borrower shall not, in the aggregate, exceed the Loan amount specified in Article I.

Section 2. The Borrower shall be entitled, subject to the provisions of this Agreement, to withdraw from the Loan Account amounts needed for the purposes as provided in Article VI of this Agreement.

¹ Came into force on 29 February 1968 by signature, in accordance with article XI.

Article III

RATE OF INTEREST

The Loan shall be free of interest.

Article IV

REPAYMENT

Section 1. The Borrower shall repay the Lender the Principal of the Loan withdrawn from the Loan Account in 36 equal semi-annual instalments—except in a case where the figure representing the Principal withdrawn is not easily or conveniently divisible by 36—in which case repayment can be made in 35 equal and one unequal semi-annual instalment—commencing on March 31, 1975.

Section 2. The Borrower shall have the right to repay in advance of maturity all or any part of any principal withdrawn with such variations in the amount of instalments as may thereby be rendered necessary.

Article V

PLACE OF PAYMENT

Any principal withdrawn from the Loan shall be repaid by the Borrower in Danish Kroner to Danmarks Nationalbank to the credit of the current account of the Ministry of Finance with Danmarks Nationalbank.

Article VI

USE OF THE LOAN BY THE GOVERNMENT OF MALAYSIA

Section 1. The Borrower shall use the proceeds of the Loan to finance purchases (including transport charges from Denmark to Malaysia) of such Danish capital goods and equipment for the implementation of Malaysia's development projects as shall be agreed upon between the Lender and the Borrower.

Section 2. The proceeds of the Loan may also be used to pay for Danish services required for the implementation of Malaysia's Development Plans, including, in particular, pre-investment studies, preparation of projects and the provision of consultants during the implementation of the projects, assembly or construction of plants or buildings, technical and administrative assistance during the initial period of the undertakings established by means of the Loan.

Section 3. The Borrower shall cause the proceeds of the Loan to be applied exclusively to the provision of goods and services needed to implement contracts

approved by both Parties. The particulars of the methods and procedures for the payment of such goods and services, beyond those already set forth in Article II, shall be as provided for in Annex B to this Agreement.

Section 4. The Lender shall not be responsible for the implementation or subsequent operation of any contract under the Loan notwithstanding his concurrence as to the eligibility of the contract.

Section 5. The terms of payment stipulated in contracts or documentation to the effect that an order has been placed with a Danish exporter or contractor for supplies or services of the nature described above shall be considered as normal and proper whenever such contracts contain no clauses involving special credit facilities from Danish exporters or contractors.

Section 6. The proceeds of the Loan may be used only for payment of goods, equipment and services contracted for after the entry into force of the Agreement.

Section 7. The Borrower may draw on the Loan Account with Danmarks Nationalbank referred to in Article II for up to three years after the entry into force of the Agreement or such other date as shall be agreed by the Lender and the Borrower.

Article VII

NON-DISCRIMINATION

Section 1. In regard to the repayment of the Loan, the Borrower undertakes to give the Lender no less favourable treatment than that accorded to other foreign creditors.

Section 2. All shipments of goods and equipment under this Agreement shall be in keeping with the principle of free circulation of ships in international trade in free and fair competition.

Article VIII

MISCELLANEOUS PROVISIONS

Section 1. Prior to the first drawing against the Loan Account referred to in Article II the Borrower shall satisfy the Lender that all constitutional requirements and other requirements laid down by statute in Malaysia have been met so that this Loan Agreement shall constitute a valid obligation binding on the Borrower.

Section 2. The Borrower shall furnish the Lender evidence of authority of the person or persons who shall, on behalf of the Borrower, take any action or execute any documents under this Agreement, and authenticated specimen signatures of all such persons.

Section 3. Any notice or request under this Agreement and any agreement between the Parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it has been delivered by hand or by mail, telegram, cable or radiogram to the Party at such Party's address specified in Article XII, or at such address as such Party shall have indicated by notice to the Party giving such notice or making such request.

Article IX

PARTICULAR COVENANTS

Any principal withdrawn from the Loan shall be repaid without deduction for, and free from, any taxes and charges, and shall be free from all restrictions imposed under the laws of the Borrower. This Agreement shall be free from any taxes imposed under the laws of the Borrower, or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof.

Article X

APPLICABLE LAW

Unless otherwise provided for in this Agreement, this Agreement and all the rights and obligations deriving from it shall be governed by Danish Law.

Article XI

DURATION OF THE AGREEMENT

Section 1. This Agreement shall come into force on the date of signature of the parties.

Section 2. When the entire amount of the Loan withdrawn has been repaid, the Agreement shall terminate forthwith.

Article XII

SPECIFICATION OF ADDRESSES

The following addresses are specified for the purposes of this Agreement :

For the Borrower :

The Treasury
Kuala Lumpur
Malaysia

Alternative address for cablegrams and radiograms :

Treasury
Kuala Lumpur

For the Lender with respect to disbursements :

Ministry of Foreign Affairs
Secretariat for Technical Co-operation with Developing Countries
Copenhagen

Alternative address for cablegrams and radiograms :

Dacomta Copenhagen

For the Lender with respect to servicing of the Loan :

Ministry of Finance
Copenhagen

Alternative address for cablegrams and radiograms :

Finans Copenhagen

IN WITNESS WHEREOF the Parties hereto, acting through their representatives thereunto duly authorized, have caused this Agreement to be signed in two copies in the English language in Kuala Lumpur this 29th day of February 1968.

For the Government of Denmark :

Kjeld WILLUMSEN

For the Government of Malaysia :

TUN TAN SIEW SIN

ANNEX A

The following provisions shall govern the rights and obligations under the Agreement between the Government of Denmark and the Government of Malaysia on a Danish Government Loan to Malaysia (hereinafter called the Agreement), of which they are considered an integral part with the same force and effect as if they were fully set forth therein.

Article I

CANCELLATION AND SUSPENSION

Section 1. The Borrower may, by notice to the Lender, cancel any amount of the Loan which the Borrower shall not have withdrawn.

If any of the following events shall have happened and be continuing, the Lender may, by notice in writing to the Borrower, suspend in whole or in part the right of the Borrower to make withdrawals from the Loan Account :

- (a) default shall have occurred in the repayment of principal under the Agreement or under any other financial commitment entered into by the Borrower in relation to the Lender; or
- (b) default shall have occurred in the performance of any other covenant or agreement on the part of the Borrower under the Agreement.

Section 2. The right of the Borrower to make withdrawals from the Loan Account shall continue to be suspended in whole or in part, as the case may be, until the event or events which gave rise to such suspension shall have ceased to exist or until the Lender shall have notified the Borrower that the right to make withdrawals has been restored, whichever is earlier, provided however, that in the case of any such notice of restoration the right to make withdrawals shall be restored only to the extent and subject to the conditions specified in such notice, and no such notice shall effect or impair any right, power or remedy of the Lender in respect of any other or subsequent event described in this Article.

If the right of the Borrower to make withdrawals from the Loan Account shall have been suspended with respect to any amount of the balance of the Loan or any part thereof for a continuous period of sixty days, the Lender may, by notice in writing to the Borrower, terminate the right of the Borrower to make withdrawals with respect to such amount. Upon the giving of such notice such amount of the Loan shall be cancelled.

Section 3. Notwithstanding any cancellation or suspension all the provisions of the Agreement shall continue in full force and effect except as is specifically provided in this Article.

Article II

REMEDIES OF THE LENDER

If any event specified in subparagraphs (a) and (b) of Section 1 of Article I shall occur and shall continue for a period of sixty days after notice in writing thereof has been given by the Lender to the Borrower, then at any subsequent time the Lender, at his option; may declare the principal of the Loan then outstanding to be due and payable immediately, and upon any such declaration such principal shall become due and payable immediately, anything in the Agreement to the contrary notwithstanding.

Article III

SETTLEMENT OF DISPUTES

Section 1. Any dispute between the Contracting Parties arising out of the interpretation or administration of the present Agreement, which has not been settled within six months through diplomatic channels, shall, at the request of either Party, be submitted to a tribunal of arbitration consisting of three members. The chairman of the tribunal shall be a citizen of a third country and shall be appointed by common consent

of the Contracting Parties. Should the Parties fail to agree on the appointment of the chairman of the tribunal, either Party may request the President of the International Court of Justice to make the appointment. Each Party appoints its own arbitrator; if a Party abstains from appointing an arbitrator within 60 days, the latter may be appointed by the chairman of the tribunal.

Section 2. Each Contracting Party shall observe and carry out awards given by the tribunal.

ANNEX B

PAYMENT OUT OF THE LOAN ACCOUNT

Payment out of the Loan Account shall be effected in the following manner :

(1) The Danish exporter or consultant and the importer shall negotiate a contract on cash terms, subject to the final approval of the Malaysian and the Danish authorities. No contract below 100,000 Danish Kroner, except for utilization of any final balance below that amount, shall be eligible for financing under the Loan Agreement.

(2) The Government of Malaysia shall make available to the Danish Ministry of Foreign Affairs copies of the contracts concluded or to be concluded under this Agreement. The latter shall ascertain, *inter alia*, that

- (a) the goods, equipment or services contracted fall within the framework of the Loan Agreement;
- (b) the capital equipment involved has been manufactured in Denmark, or the services to be rendered will be performed by persons carrying on business in Denmark,

and inform the Government of Malaysia whether the contract is approved for financing under this Agreement.

(3) When the contracts have been approved, the Government of Malaysia may draw on the Loan Account with Danmarks Nationalbank to effect payment of the consignment referred to in the contract. Payments out of this account to Danish exporters or consultants shall be subject to presentation of the necessary documents when Danmarks Nationalbank has ascertained that the conditions for effecting such payments have otherwise been complied with.

EXCHANGE OF LETTERS

I

ROYAL DANISH EMBASSY

Kuala Lumpur, 29th February, 1968

Excellency,

I have the honour to refer to the Agreement of today's date between the Government of Denmark and the Government of Malaysia on a Danish Government Loan to Malaysia and to seek your confirmation that the Loan will be used for the purchase of the following equipment or services :

1. Abattoir equipment;
2. School and educational equipment;
3. Hospital, Medical and Dental equipment;
4. Agricultural equipment and machinery;
5. Transport and Communications equipment;
6. Drainage and Irrigation equipment;
7. Road Construction equipment and machinery;
8. Fisheries equipment;
9. Power development equipment;
10. Feasibility Studies :
 - (a) relating to General Transport Survey;
 - (b) relating to Fishing harbours;
 - (c) relating to Land development.

I should also be grateful if you would confirm that the above list is not exclusive nor is it binding on either Party and that it may be amended from time to time.

Yours sincerely,

Kjeld WILLUMSEN
Ambassador of DenmarkHis Excellency Tun Tan Siew Sin
Minister of Finance
Kuala Lumpur

II

MINISTER OF FINANCE

MALAYSIA

Kuala Lumpur, 29th February, 1968

Excellency,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows :

[*See letter I*]

I have the honour to confirm that the foregoing correctly states the understanding between our two Governments and agree that your letter and this reply shall be regarded as placing that understanding on record.

I avail myself of this opportunity to extend to your Excellency the assurances of my highest consideration.

TUN TAN SIEW SIN
Minister of Finance

His Excellency Mr. Kjeld Willumsen
Ambassador of Denmark
Kuala Lumpur